

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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UNITED STATES OF AMERICA,  
Plaintiff,

vs.

BRIAN PATRICK HERRIMAN,  
Defendant.

MEMORANDUM DECISION AND  
ORDER DENYING DEFENDANT'S  
MOTION FOR HEARING

Case No. 2:05-CR-212 TS

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Defendant seeks a supervised release revocation hearing. Defendant states he is currently in state custody with a federal detainer. Because Defendant appears pro se, the court construes his filing liberally.<sup>1</sup>

Rule 32.1 of the Federal Rules of Criminal Procedure proves that “[a] person held in custody for violating . . . supervised release must be taken without unnecessary delay before a magistrate judge.”<sup>2</sup> Because Defendant is currently held in state custody, he is

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<sup>1</sup>*Erickson v. Pardus*, 127 S.Ct. 2197, 2200 (2007).

<sup>2</sup>Fed. R. Crim. P. 32.1(a).


not “held in custody *for* violating . . . supervised release.”<sup>3</sup> Defendant will not be entitled to a hearing on his supervised release matters until he is transferred to federal custody.<sup>4</sup>

It is therefore

ORDERED that Defendant’s Motion for supervised release revocation hearing (Docket No. 47) is DENIED.

DATED August 5, 2009.

BY THE COURT:

  
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TED STEWART  
United States District Judge

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<sup>3</sup>*Id.* (emphasis added).

<sup>4</sup>*United States v. Swenson*, 250 Fed. Appx. 838, 840 (10th Cir. 2007) (unpublished case holding that “Rule 32.1(a) entitles only those currently in federal custody to a hearing”).